***THE HON'BLE Ms. JUSTICE G. ROHINI**

**+ WRIT PETITION NO.12223 OF 2004**

% 10/03/2006

# Bandaru Ramu, S/o. Venkata Swamy, 45 years,

Occ: Petty Business, R/o.20-7-13, Shantinagar,

Near Andhra Cement Factory, Vijayawada,

Krishna District. … Petitioner

Vs.

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1. The Secretary to Government,

   Government of A.P., Housing Department,

   Secretariat, Hyderabad and 4 others. … Respondents

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> Head Note:

! Counsel for the petitioner : Sri Ramadas Bhadri Raju

^ Counsel for the respondents : Govt. Pleader for Co-operation

Counsel for the 5th respondent : Sri M.V.S. Suresh Kumar

Cases referred :

- NIL -

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.12223 OF 2004**

**Dated: 10th March, 2006.**

Between:

Bandaru Ramu, S/o. Venkata Swamy, 45 years,

Occ: Petty Business, R/o.20-7-13, Shantinagar,

Near Andhra Cement Factory, Vijayawada,

Krishna District. … Petitioner

And

2. The Secretary to Government,

Government of A.P., Housing Department,

Secretariat, Hyderabad and 4 others. … Respondents

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.12223 OF 2004**

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**ORDER :**

The petitioner claims to be a member of the A.C.C. Employees and Industrial Co-operative House Building Society Limited, Vijayawada (hereinafter referred to as 'the society') which was registered in the year 1975 under the provisions of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act'). It is stated that the 5th respondent was the last elected President of the Managing Committee of the society, the term of which expired on 9-10-2001. Thereafter, the 3rd respondent –

Divisional Co-operative Officer, Vijayawada by proceedings dated 8-10-2001 appointed persons-in-charge under Section 32 (7) (a) of the Act for a period of six months. Aggrieved by the same, the 5th respondent filed a Revision Petition before the Government of A.P. Pending the said Revision, by order dated 23-11-2001 the 1st respondent – Government of A.P. directed the 3rd respondent to appoint erstwhile committee headed by the 5th respondent and others as persons-in-charge committee for a period of six months or till the elections are held in accordance with the rules. In pursuance thereof, the 5th respondent as Chairman along with other members has been continuing as persons-in-charge committee and its term has been extended from time to time vide proceedings of the 3rd respondent dated 14-6-2002 and 12-9-2002.

While so, since the 5th respondent was not residing at Vijayawada, the seat of the society and there was no progress in the allotment of plots of the society, the petitioner made a representation bringing the same to the notice of the 3rd respondent. In response, the 3rd respondent by letter dated 30-7-2003 advised the society that the members themselves can take steps to convene the general body and elect a temporary part-time person-in-charge committee among themselves to mange the affairs of the society if the President is not available to the members and acting against the interest of the members of the society. Pursuant thereto, the General Body Meeting was held on 16-8-2003 and a committee was elected with the 4th respondent as President, one G. Subbarao as Secretary and five others as Directors. The fact of the said election was duly intimated to the third respondent by the 4th respondent vide his letter dated 8-9-2003 requesting to arrange handing over the records from the 5th respondent. That apart, on a representation made by the newly elected body, the 1st respondent – Government of A.P. vide memo dated 6-10-2003 also issued directions to the 2nd respondent - Commissioner for Co-operation to arrange for handing over the records to the newly elected committee headed by 4th respondent. Accordingly, the 2nd respondent by letter dated 14-10-2003 issued necessary directions to the 3rd respondent.

However, the 3rd respondent issued proceedings dated 28-10-2003 purportedly in exercise of powers under Section 32 (7) (a) of the A.P. Co-operative Societies Act, 1964 appointing the Co-operative Sub-Registrar as part-time person-in-charge of the society for a period of six months from 29-10-2003 or till the elections are held whichever is earlier. In the said proceedings, the elections held to the society on 16-8-2003 being contrary to Section 31 of the Act and Rule 22 of the Rules were cancelled. It appears that aggrieved by the said proceedings dated 28-10-2003 in appointing a person-in-charge, the 5th respondent made a representation dated 29-11-2003 before the 2nd respondent claiming that the elections to the managing committee of the society were held on 9-9-2002 and therefore the committee elected is entitled to hold office till 8-9-2007. The said representation was treated as a Revision under Section 77 of the A.P. Co-operative Societies Act, 1964 and by order dated 17-12-2003 the 2nd respondent, while calling for the records and remarks on the representation, suspended the proceedings of the 3rd respondent dated 28-10-2003.

Subsequently, the 2nd respondent by proceedings dated 24-3-2004 allowed the Revision Petition and set aside the proceedings of the 3rd respondent dated 28-10-2003 holding that the 3rd respondent – Deputy Registrar of Co-operative Societies acted beyond jurisdiction in not recognizing the elections conducted by the incumbent committee and in asking a group of members to elect a temporary person-in-charge committee. The action of the 3rd respondent in appointing a Government Official as part-time person-in-charge committee was also found to be erroneous. Questioning the said order, dated 24-3-2004 passed by the 2nd respondent, the present writ petition is filed. The petitioners also seek a further direction to the respondents to conduct the elections to the society at the earliest.

The 3rd respondent – Deputy Registrar of Co-operative Societies filed a counter-affidavit stating that the proceedings dated 28-10-2003 were passed in exercise of powers under Section 32 (7) (a) of the Act cancelling the earlier proceedings under which the term of person-in-charge committee was extended and appointing an official person-in-charge to manage the affairs of the society.

The 5th respondent filed a separate counter-affidavit stating that the 3rd respondent has no jurisdiction to issue directions to convene a meeting and therefore the proceedings of the 3rd respondent dated 30-7-2003 as well as the subsequent proceedings dated 28-10-2003 were without jurisdiction. It is also stated that once the elections are conducted validly, the question of conducting fresh elections does not arise and therefore the petitioner has no locus standi to challenge the elections conducted on 9-9-2002.

I have heard the learned Counsel for both the parties and perused the material on record.

From the pleadings of the respective parties, it is clear that the term of the elected managing committee with the 5th respondent as the President expired on 9-10-2001. Thereafter, the said managing committee was appointed as the person-in-charge under Section 32 (7) (a) of the Act on 14-6-2002 for a period of six months and again vide proceedings dated 12-9-2002 for another period of six months. Thus, admittedly the extended period of the said person-in-charge committee also expired on 13-3-2003. The 5th respondent does not dispute the same, but claims that the elections to the committee were held on 9-9-2002 in which he was elected as President and that the said committee is entitled to hold office till 8-9-2007. The said version of the 5th respondent has been disputed by the petitioner alleging that no such elections were held on 9-9-2002. Even otherwise, according to the petitioner, such election conducted by the person-in-charge committee is not in conformity with Section 32 (7) (a) of the Act and therefore it is null and void.

Having regard to the facts and circumstances of the case and particularly in view of the undisputed fact that the term of the elected committee headed by the 5th respondent expired on 9-10-2001 and thereafter admittedly the said committee was continuing as a person-in-charge committee, even assuming that an election to the society was held on 9-9-2002 by the person-in-charge committee headed by the 5th respondent, the question that arises for consideration is whether such election is

valid under the provisions of the Act.

Section 31 of the Act which provides for the constitution of managing committees to the extent it relevant may be extracted hereunder :

> *"31 (2) (a) Save as otherwise provided in this Act, the term of office of the committee or any of its members or of the President elected in accordance with the provisions of sub-section (5) shall be five years from the date of election of the members of the committee :*
>
> *Provided that the term of office of five years specified in this clause shall be applicable only to a committee or its members or the President elected in any ordinary election conducted after the commencement of the Andhra Pradesh Co-operative Societies (Second Amendment) Act, 1995 and the term of office of any committee or its members or the President holding office at such commencement shall be the same for which they were elected under the law in force when they were elected.*
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> *(b) It shall be the duty of the Registrar to hold elections to the office of the members of the committee of a society which received State aid as specified in Section 43 of the Act before the expiry of their term.*
>
> *(c) In respect of other societies it shall be the responsibility of the incumbent committee of such society to hold elections to the office of the members of the committee in the manner specified in the byelaws before the expiry of the term :*
>
> *Provided that where the committee of a society requests the Registrar to hold elections to the office of the members of the committee, the Registrar shall hold elections to the office of the members of the committee in the manner prescribed on payment of costs in advance."*

It is clear from sub-section (2) of Section 31 that the term of the office of the managing committee shall be five years from the date of the election of the members of the committee. Clause (b) of Section 31 (2) states that in respect of the society which received State aid as specified in Section 43 of the Act, it shall be the duty of the Registrar to hold elections to the office of the members of the society before the expiry of their term. So far as the other societies are concerned, Section 31 (2) (c) provides that it shall be the responsibility of the **incumbent committee** of the society to hold elections to the office of the members of the committee in the manner

specified in the bye-laws before the expiry of the term.

It is not in dispute that the society in question in the present case is not in receipt of any State aid as specified under Section 43 of the Act. Hence, as per Section 31 (2) (c) of the Act, it shall be the responsibility of the **incumbent committee** to hold elections before the expiry of the term.

The expression '**incumbent committee**' itself refers to an elected committee whose term is going to expire shortly. Since admittedly in the case on hand, the term of the elected committee expired on 9-10-2001 itself and thereafter the elected committee headed by the 5th respondent as President was only continuing as a person-in-charge committee, undoubtedly the said committee cannot be treated as an incumbent committee so as to fall under Section 31 (2) (c) of the Act.

Though under Clause (b) of Sub-section (7) of Section 32 of the Act the persons appointed as persons-in-charge committee are entitled to exercise all or any of the functions of the committee and to take all such actions as may be required in the interest of the society subject to such instructions or directions as may be issued by the Government or the Registrar from time to time, such powers do not include the power to hold elections since under Section 31 (2) (c) of the Act such power was expressly conferred only on the incumbent committee of the society.

For proper appreciation, Section 32 (7) of the Act may be extracted hereunder :

> *"32(7)(a) (i) : If there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Government, in respect of such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months and the Government may, on their own and the Registrar with the previous approval of the Government, extend, from time to time, such period beyond six months, so however that the aggregate period include the extended period if any, shall not exceed three years.*
>
> *(ii) Notwithstanding anything contained in this Act, in the special circumstances and for the reasons to be recorded, if in the opinion of*

*the Government, it is not possible to hold the elections to the societies or class of societies, the Government may by order extend the term of the person or the persons appointed to manage the affairs of the society or class of societies beyond three years but not exceeding five years in aggregate.*

*(b) … … … … … … ….*

*(c) …. … .. … … … ….*

*(d) The Registrar may at any time, and shall at the expiration of the period of appointment of person or persons so appointed, arrange for calling of a general meeting for the election of a new committee in such manner as may be prescribed. The person or persons so appointed shall cease to manage the affairs of the society on the new committee entering upon its office."*

On a combined reading of Section 31 (2) (c) and Section 32 (7) (b) of the Act, particularly Section 32 (7) (d) which clearly provides that the Registrar shall at the expiration of period of the persons appointed as persons-in-charge committee arrange for calling of a general meeting for the election of a new committee in such manner as may be prescribed, I am of the opinion that even if the erstwhile committee which was being continued as person-in-charge committee held elections on 9-9-2002, the same are void being contrary to law.

In the light of the scheme of the Act and the Rules, particularly Section 31 (2) (c) of the Act read with Rule 22 (1) (a) of the Rules, it is clear that though the elected managing committee before the expiry of its term is entitled to hold elections on its own in the manner specified in the bye-laws, once the term expired even if the erstwhile committee is being continued as the person-in-charge committee having been appointed so under Section 32 (7) (a) of the Act, such person in-charge committee cannot hold elections on its own, but as provided under 32 (7) (b) it is for the Registrar to arrange for calling of a general meeting for the election of a new committee following the procedure prescribed under the Rules. In the circumstances, even assuming that the plea of the 5th respondent that an election was held to the society and the new managing committee assumed office on 9-9-2002, such election being contrary to law is void and nonest. Hence, the 3rd respondent has rightly declined to recognize the elections said to have been held to

the society on 9-9-2002.

For the aforesaid reasons, I am of the opinion that the impugned proceedings of the 2nd respondent dated 28-10-2003 are erroneous and unsustainable.

Accordingly, the impugned proceedings are set aside and the Writ Petition is disposed of with a direction to the 3rd respondent to appoint a fresh person-in-charge committee forthwith and thereafter to take appropriate steps to hold elections to the society in accordance with law as expeditiously as possible preferably within a period of three (3) months from the date of receipt of this order. No costs.

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G. ROHINI, J.

Dt. 10–03-2006.

Note:- LR copy to be marked.

(B/O)

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